issues of *bona fide* and consideration. I also find that the totality of the evidence falls short of establishing, and is insufficient for drawing, the inference that there had been collusion on the part of the respondent. The grounds must fail.

I would also briefly deal with paragraph 8(b) of Latip's affidavit made on 30 June 1986. There allegations were made about fraudulent preference and fraudulent intent. However, no evidence was led in this direction nor submissions made on fraud. This is not surprising because counsel for the applicant had, as indeed indicated in the title to the amended motion, made clear in court at the outset that the amended motion relied on section 52(1) of the Act. Owing to the stand adopted by the applicant, it is natural that the respondent took no step to rebut or encounter the alleged fraudulent preference and fraudulent intent which more appropriately falls under section 53(1) which was cited in the original motion. In any event, section 53(1) could have no application since the settlement was made on 25 September 1981 whereas the bankruptcy petition in this case was presented on 16 August 1985, *i.e.* more than the six months enacted in the said section 53(1).

In ground (1) of the amended motion, it was said that Kong Yuok Ung having been adjudged bankrupt on 9 July 1984 the two parcels of land registered in the name of the bankrupt became vested in the Official Assignee by virtue of section 24(4) of the Act. On adjudication, an Official Assignee can take no better title than that already held by the bankrupt. In the instant case, I have held that it has not been proved that the settlement in favour of the respondent as purchaser lacked good faith and for valuable consideration. That being so, the agreement dated 25 September 1981 is not void or voidable under section 52(1) of the Act. Clause 3 thereof expressly stipulated that the lands were held by the vendor Kong Yuok Ung (later, a bankrupt) in trust for the respondent as purchaser. Section 48(1)(a)(i) of the Act excludes property held by a bankrupt on trust for other persons. In the premises, the ground must also fail.

Lastly, ground (2) of the amended motion states that the two parcels of land were vested in the Official Assignee under Instrument No. L. 6122/85 and No. L. 6123/85 both registered at the Sibu Land Registry Office on 3 December 1985. The two instruments are "Applications For Transmission" made by Latip as bankruptcy officer by virtue of the adjudication order made against the bankrupt and were registered expressly subject to the caveat Instrument No. L. 3964/1981 lodged by the respondent. Since as held earlier in this judgment, the transaction complained of is not declared void and by the time of the making of the adjudication order, the bankrupt was merely holding the two parcels of land on trust, the two registered instruments purporting to be in favour of the bankruptcy officer, per se, afford no valid ground in support of the grant of the amended motion. I would add that, had relief been properly sought, I would, on the evidence and materials before me, have set them aside.

For the above reasons, the amended motion of the Official Assignee is dismissed with costs to the respondent. In the absence of an agreement, such costs are to be taxed.

Order accordingly.

Solicitors: *Robin Hii & Co.*

SOVA SDN. BHD. v. KASIH SAYANG REALTY SDN. BHD.

[O.C.J. (Lim Beng Choon J.) 9 June 1987]

[Alor Setar – Civil Suit No. 25-337-86]

Civil Procedure – Jurisdiction – Whether court has jurisdiction to determine dispute – "Local jurisdiction" – Meaning of – Place of business and place where cause of action arose different from place where proceedings instituted – Whether court is the proper forum – Whether application irregular – R.H.C. 1980, O. 81 – Courts of Judicature Act, 1964, s. 23.

On December 10, 1986, Sova Sdn. Bhd., the plaintiffs, instituted the present civil suit against Kasih Sayang Realty Sdn. Bhd., the defendants, whereby they alleged that the defendants have committed a breach of a sale and purchase agreement entered into by the two parties on March 13, 1984.

By their writ of summons with the accompanying statement of claim filed in this court on the same date, the plaintiffs sought an order for specific performance of the said agreement and alternatively a rescission of the said agreement and they also claimed damages and costs. The defendants entered an appearance to the writ on December 23, 1986 and filed their statement of defence on January 5, 1987. Prior to the filing of the statement of defence, the plaintiffs had made an application by way of summons-in-chambers on December 29, 1986, under Order 81 rule 1(b) of the Rules of High Court 1980 for certain reliefs.

At the hearing of the application, the defendants raised the following preliminary objections:

(1) that this court has no jurisdiction to determine the dispute between the parties or alternatively that this court is not the proper and convenient forum to determine the dispute between the parties;

(2) that the application for necessary judgment pursuant to Order 81 of the Rules of the High Court 1980 should be dismissed with costs for non-compliance with Order 81 rule 2(2) of the said Rules.

Held: (1) a High Court located at Penang or at Alor Setar is but a branch of the High Court in Malaya and each branch of the High Court in Malaya located in any state has concurrent jurisdiction to entertain any civil proceedings regardless of whether the cause of action arose in another state;

(2) the present court certainly has jurisdiction to entertain the present civil proceedings;

(3) however, in the present case, the present civil proceedings should not be dealt with by this court;

(4) on the second issue, it is not mandatory that an application for Order 81 must in all cases have the minutes of the judgment sought for attached to the summons although in practice minutes of the judgment are normally attached to the summons. In any event, the failure to attach the said minutes to the summons is not fatal; it is curable under Order 2 rule 1 of the Rules of the High Court.

Cases referred to:

(1) *Tengku Abdul Muiz Shah & Ors.* v. *Public Prosecutor* [1983] 1 M.L.J. 422 (refd).
(2) *Syarikat Nip Kui Cheong Timber Contractor* v. *Safety Life and General Insurance Sdn. Bhd.* [1975] 2 M.L.J. 115 (refd).
(3) *Re Application of Asia Insurance Co. Ltd.* [1968] 2 M.L.J. 228, 229 (cited).

SUMMONS-IN-CHAMBERS.

Choe Kuan Him for the plaintiff/applicant.

Yip Fook Thai for the defendant/respondent.

Cur. Adv. Vult.

Lim Beng Choon J.: On December 10, 1986 Sova Sdn. Bhd., the plaintiffs, instituted the present civil suit against Kasih Sayang Realty Sdn. Bhd., the defendants, whereby they allege that the defendants have committed a breach of a sale and purchase agreement entered into by the two parties on March 13, 1984 ("sale and purchase agreement"). By their writ of summons with the accompanying statement of claim filed in this court on the same date, the plaintiffs request for an order for specific performance of the said agreement and alternatively a rescission of the said agreement and they also claim damages and costs.

The defendants entered an appearance to the writ on December 23, 1986 and filed their statement of defence on January 5, 1987. Prior to the filing of the statement of defence, the plaintiffs had made an application by way of summons-in-chambers (enclosure 3) on December 29, 1986 under Order 81 rule 1(b) of the Rules of the High Court 1980 for the rescission of the said agreement and the consequential orders directing the defendants to refund a certain sum of money paid by the plaintiffs to the defendants and damages and costs. An affidavit in support was duly filed with the application on the same day.

At the hearing of the application on February 21, 1987 in chambers the learned counsel for the defendants raised the following preliminary objections:

(1) that this court has no jurisdiction to determine the dispute between the parties or alternatively that this court is not the proper and convenient forum to determine the dispute between the parties;

(2) that the application for necessary judgment pursuant to Order 81 of the Rules of High Court 1980 should be dismissed with costs for non-compliance with Order 81 rule 2(2) of the said rules.

As it would take quite some time to hear the arguments of both the learned counsel I suggested to them that it would be more convenient for them to put in their respective written submissions which they eventually did.

In his submission on the jurisdiction issue the learned defence counsel contends that as the cause of action arose in Penang and places of business of both the plaintiff company and the defendant company are located in Kuala Lumpur, it must follow that this court has no jurisdiction to determine the dispute between the two parties pursuant to section 23(1) of the Courts of Judicature Act 1964 which reads:

"23.(1) Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where –

(a) the cause of action arose, or

(b) the defendant or one of several defendants resides or has his place of business, or

(c) the facts on which the proceedings are based exist or are alleged to have occurred, or

(d) any land the ownership of which is disputed is situated

within the local jurisdiction of the court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of any other High Court."

It is the contention of the learned defence counsel that the facts as disclosed in the pleadings and the affidavits do not indicate that any one of the four criteria specified in the said section 23(1) is applicable to the civil proceedings now before this court. The parties have not given a written consent to the institution of the civil proceedings in this court. He further contended that the term "local jurisdiction" must be construed as meaning within the local territorial jurisdiction of the High Court in which the same is located and he relies on the case of *Tengku Abdul Muiz Shah & Ors.* v. *Public Prosecutor*[1] to support his contentions.

On the other hand the learned counsel for the plaintiffs submits that since the term "High Court" is defined in section 3 of the Courts of Judicature Act 1964 to mean the High Court in Malaya and the High Court in Borneo it must therefore follow that the term "local jurisdiction" as defined in the said section must be construed, in the case of the High Court in Malaya, as the territory comprised in the eleven States in Malaya and in the case of the High Court in Borneo, the territory comprised in Sabah and Sarawak. The High Court in Malaya therefore has the jurisdiction to try all civil cases within its local jurisdiction, *i.e.* the territory comprised in the eleven states. He relies on *Syarikat Nip Kui Cheong Timber Contractor* v. *Safety Life and General Insurance Sdn. Bhd.*[2] to support his submission.

In considering the jurisdiction issue, it is important at the outset to take note of the provisions of Article 121(1) of the Constitution which reads:

"121(1). Subject to clause (2) the judicial power of the Federation shall be vested in *two High Courts* of co-ordinate jurisdiction and status, namely –

(a) one in the States of Malaya which shall be known as the High Court in Malaya which shall have its principal registry in Kuala Lumpur, and

(b) one in the Borneo States which shall be known as the High Court in Borneo and shall have its principal registry at such place in the Borneo States as the Yang di-Pertuan may determine." (my emphasis).

From the wordings of Article 121(1) it cannot be disputed that the Constitution created only two High Courts, that is the High Court in Malaya and the High Court in Borneo. The definition of the term "High Court" in section 3 of the Courts of Judicature Act 1964 ("the 1964 Act") does no more than to reiterate the constitutional policy entrenched in Article 121(1) of the creation of only two High Courts. It is implicit that a High Court located at Penang or at Alor Setar is but a branch of the High Court in Malaya and each branch of the High Court in Malaya located in any state has concurrent jurisdiction to entertain any civil proceedings regardless of whether the cause of action arose in another state.

Turning to the submissions of the learned counsel, the striking conflict arising from their respective submissions relates to the definition of "local jurisdiction" appearing in section 3 of the 1964 Act. The conflict is to my mind easily resolved by the following passage in the judgment of Hashim Yeop Sani J. (as he then was) in the case of *Syarikat Nip Kui Cheong (supra)* where His Lordship said at p. 116:

"The definition of local jurisdiction (in section 3 of the Courts of Judicature Act 1964) sets out the *territorial jurisdiction of the High Court in Malaya and the High Court in Borneo.*" (my emphasis)

With due respect I adopt the interpretation of "local jurisdiction" as enunciated in that case.

Another point worthy of notice is that a writ of summons issued by this court must bear the title "In the High Court in Malaya at Alor Setar". Likewise a writ issued by the High Court located at Penang must also bear the title "In the High Court in Malaya at Penang". The words "at Alor Setar" and "at Penang" are clearly indicative that the High Court located at Alor Setar and Penang respectively are but branches of the same High Court in Malaya. Support of this proposition can be found in the case of *Re Application of Asia Insurance Co. Ltd.*[3] where it is stated:

"The applicants in the first instance submitted that the interlocutory judgment was irregularly obtained because the action was filed in Ipoh though the cause of action arose in Kedah. It was the contention of the applicants that the filing of the action in Ipoh is contrary to the provisions of section 23 of the Courts of Judicature Act 1964. The term 'High Courts' is, however, defined in section 3 of the Courts of Judicature Act to mean the High Court in Malaya, the High Court in Borneo and the High Court in Singapore. Because of this definition I think the plaintiff is entitled to file the action in any branch of the High Court in Malaya. The defendant is, however, not precluded from making an application under rule 2(1) of the Third Schedule to the Courts Ordinance 1948 to have the action transferred to the High Court Penang or Alor Star. The interlocutory judgment was therefore obtained regularly."

It is also implicit from that judgment that a branch of the High Court located in any state has concurrent jurisdiction to entertain any civil proceedings; otherwise the mere consent of the parties given under section 23(1) of the 1964 Act that a civil suit be tried in a state other than the state where the four criteria are applicable would be otiose simply because if a court has no jurisdiction to deal with a matter no consent of the parties can confer jurisdiction on the court.

For the above reasons I hold that this court certainly has jurisdiction to entertain the present civil proceedings notwithstanding that the four criteria stipulated in section 23(1) of the 1964 Act are not applicable.

However, that is not the end of the matter since the defendants have also contended that this court is not the proper or convenient forum to determine the dispute between the parties. To this contention, I agree. It is quite obvious that in creating a branch of the High Court in Malaya in each state, the legislature had two things in mind:

(i) to enable the parties of a civil suit to have easy access to a branch of the High Court in Malaya located in a state where either the plaintiff or the defendant resides. When a person is sued for breach of contract or for that matter a tortious act when the breach or the tort was committed in the state where he resides, it is certainly unreasonable to require him to travel all the way, say, to Kuala Lumpur to defend himself. Apart from the expense incurred, the defendant may have to remain in Kuala Lumpur perhaps one week to participate in the civil proceedings. No doubt he would be compensated in terms of costs should he succeed in defending himself but the inconvenience caused may outweigh the amount of costs awarded to him;

(ii) the obvious reason for the setting up of a branch of the High Court in Malaya in every one of the 11 states is to facilitate the disposal of cases in Malaya and to cut down, even if it is not yet possible to obliterate, the backlog of cases pending in any one or more of the branches of such High Court.

For the reasons as stated above, I do not think that the present civil proceedings should be dealt with by this court. I am also of the view that it is for the defendants to apply to this court for a transfer of the civil suit and the application made by the plaintiffs under Order 81(1) to the High Court in Malaya at Penang or Kuala Lumpur since the cause of action arose in Penang but the parties have their places of business in Kuala Lumpur.

Turning to the second issue concerning the irregularity of the application, all I can say is that when the applicant is seeking the aid of Order 81 there is an option either to set out the reliefs of the judgment sought by the plaintiff in the summons or attached thereto minutes of the judgment sought by the plaintiffs – (see Order 81 rule 2 of the Courts of Judicature Act) – and it is not mandatory that an application for Order 81 must in all cases have the minutes of the judgment sought for attached to the summons although in practice minutes of the judgment are normally attached to the summons. In any event the failure to attach the said minutes to the summons is in my view not fatal; it is curable under Order 2 rule 1 of the High Court Rules. I therefore cannot accede to the learned defence counsel's contention that the application made by the plaintiff is bad and therefore must be struck out.

On the question of costs I think it is fair for me to make no order as to costs in view of the circumstances of this case.

Order accordingly.

Solicitors: *Syarikat Choe; Syed Alwi, Ng & Teoh.*

M.K. SELLADURAI v. C. MARIMUTHU

[O.C.J. (Mustapha Hussain J.) 26 February 1988]

[Seremban – Originating Summons No. 31-96 of 1986]

Civil Procedure – Injunction – Setting aside – Exceptional circumstances – Costs and damages – Whether should be awarded.

The applicant sought an injunction to restrain the respondent from conducting or holding or carrying on the annual general meeting of an association of which the respondent was the president.

The injunction, which was granted, was later discharged at the instance of the respondent. The respondent thereafter applied for costs and damages that arose out of his application to set aside the injunction.

Held: (1) normally, costs follow the event. The successful party is entitled to costs. It is only in exceptional circumstances where the successful party had misconducted